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To: Board of Governors of the Federal Reserve System and Other Agencies of the
Federal Financial Institutions Examination Council (FFIEC)

From: Michael A. Alvey

Date: 7/16/04

RE: Overdraft Protection Guidance, Docket No. OP-1198

Since 2000, BSG, LLC, has implemented a courtesy overdraft program, OverdraftHonor®, to financial institutions with cumulative assets of more than \$174 billion. We are pleased to report that BSG's best practices, which advise informing and educating consumers about how overdrafts are handled in each institution, have never resulted in a regulatory violation. We attribute this accomplishment to the willingness of our clients to adhere to our "Responsible Approach™" recommendations, which closely mirror the Board's proposed regulations addressing concerns about the marketing of courtesy overdraft protection programs. As such, we would like to compliment the FFIEC on its thoroughness of the proposed guidance. However, we would like to address several areas in the guidelines with which we have concern, and hope the FFIEC will consider our comments before issuing final guidance.

30-Day Charge-Off Requirement--We strongly urge the FFIEC to reconsider its proposal to establish guidance to charge off accounts that are overdrawn for 30 days. We believe institutions should be able to establish their own charge-off policies to match their historical loss experience and monitoring systems available to them. We do however, fully support the FFIEC's recommendation to establish loss estimation processes to support an institution's allowance for loan and lease losses, and the suspension of any privileges under the program when an account remains overdrawn for a certain number of days (we recommend 20 days). Due to the fact institutions will be required to adopt such practices, a requirement to charge off an account within a specific time frame does not appear to be necessary from a safety and soundness point of view.

We also do not understand the rationale for proposing this requirement only for overdrawn accounts "created under the overdraft protection program" versus all overdrawn accounts. In our opinion, a 30-day overdrawn account that is not in an overdraft protection program may be at a higher risk for collection than a 30-day overdrawn account that is in such program, due to the screening criteria used by most institutions to reduce such risk. As a result, we respectfully disagree with the FFIEC's

proposal to have charge-off rules for overdrawn accounts in an overdraft protection program differ from those for other overdrawn accounts.

Most institutions charge off and close accounts in one process, as part of their standard system procedure which we believe is a prudent practice. With the adoption of the Board's 30-day charge off policy, we suspect most institutions will process the closure of the account concurrently with the charge off. The *Green Book 2000* regulations require institutions to give a 30-day notice of account closure to those accountholders that receive Federal deposits through the ACH system. With the proposed 30-day charge off policy, it would be required that these disclosures be sent on the first day of an overdraft. Most institutions would be unable to send an account closure notice to only those accountholders that receive Federal direct-deposited benefit payments. Thus, in order to comply with such regulation all overdrawn accounts would be notified. We do not believe such notification is necessary since the overwhelming majority of overdrawn accounts are brought to a positive balance within 10 days.

We believe working with accountholders to save their account is by far a more favorable option than charging them off. Once their account is charged off and closed, there is an incentive for them to open an account with another institution, or worse, to remain un-banked, which is not in the consumer's best interest. As a viable alternative, and already widely in practice, many institutions grant interest-free programs that transfer the negative balance in a troubled consumer's account to a contra-demand deposit account or loan system to track the obligation and payments. We understand the FFIEC's desire to oversee the safety and soundness of institutions that offer an overdraft protection program; however, we are not aware of any such problems as a result of the thousands of programs currently in practice in institutions. Consequently, we humbly request that safety and soundness requirements be established commensurate with true risk so as not to overburden institutions with designing separate processes to meet a 30-day charge-off requirement.

Unused Commitments--We respectfully disagree with the FFIEC's proposal requiring financial institutions to report available amounts of discretionary overdraft limits as unused commitments. The establishment and communication of a discretionary, non-contractual, overdraft limit is, by definition, not a "commitment" and therefore, the reporting of "unused commitments" completely contradicts the FFIEC's own definition of a discretionary overdraft protection program, which it proposes in its best practices. The FFIEC's proposal should seek to clarify through definitive guidance that these program are, in fact, non-contractual services governed by an accountholder's depository agreement.

As stated above, we are not aware of any financial institution that has suffered a safety and soundness problem as a result of offering an overdraft courtesy program to its customers. Consequently, we strongly urge the FFIEC to reconsider its proposal to require financial institutions to report available amounts of discretionary overdraft

limits as unused commitments.

Explain Check-Clearing Policies--We believe the explanation of check-clearing policies should be addressed in the depositor's account agreement, not in a disclosure letter, as proposed in the FFIEC best practices. Check-clearing policies can be difficult to explain as well as lengthy and including such explanations in a letter replete with other best practice disclosures dilutes the pertinent facts of the letter, and thus, the consumer's understanding of the program.

Consider Daily Limits--We believe the best practice that calls for institutions to "consider daily limits" on the number of NSF/OD fees charged in a single day for multiple overdrafts should be reconsidered. With the implementation of overdraft protection programs, a financial institution pays more of an accountholder's NSF items into overdraft, and, as a result, provides a valuable service while taking on additional risk. Thus, we believe charging a fee for every NSF item presented is a prudent and justified practice. Institutions would certainly not want to incentivize accountholders to overdraft by setting a low daily limit, and encouraging multiple overdrafts in a day due to no penalties. Furthermore, we are aware of many institutions that cannot systematically limit the number of charged NSF items.

We do not believe the FFIEC should include this item as part of its best practice proposals, even though it is prefaced by the term "consider." If included, we are concerned that regulatory agencies would hold the practice as a standard, and place a burden on institutions to explain why they did or did not impose a daily limit. Setting daily limits on NSF/OD charges should be left up to each institution's management in consideration of its individual technical capabilities and pricing philosophy.

We hope the FFIEC will seriously consider the changes recommended above. Please feel free to contact me at 502-581-1511 if you have questions regarding our comments.

Sincerely,

Michael A. Alvey
President & COO
BSG, LLC